

04-1639-CBS

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Jon D. Murphy, having been duly sworn, do hereby depose and state as follows:

1. I am a Special Agent with the United States Secret Service (the "Secret Service"), a position I have held since September 23, 2002. I am assigned to the Boston Field Office, Boston, Massachusetts. I have received specialized training in the investigation of various federal crimes including, but not limited to, counterfeiting of checks, counterfeiting of United States currency, bank fraud, and credit card fraud including violations of 18 U.S.C. §1029.

2. Since January of this year, I have been involved in an investigation of credit card, or access device "skimming" in Buzzards Bay, Massachusetts.¹

3. This affidavit is based on information provided by agents and officers assigned to the New England Electronic Crimes Task Force ("NET"); officers of the Bourne Police Department ("BPD"); Falmouth Police Department and the Sandwich Police Department.

¹Based upon my training and experience, I know that the term "access device" as defined at 18 U.S.C. §1029(e)(1) includes a credit card. Specifically, access device is defined to include, among other things, any card or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services or any other thing of value.

4. This affidavit is not intended to set forth all of the information that other law enforcement personnel and I have gathered during this investigation, but is submitted in support of an application for a criminal complaint charging **(1) Ouajdi Ben-Mrad, a/k/a Wazzie ("Ben-Mrad")**² and **(2) JOHN DOE**³, a male of Asian descent, depicted in the attached photographs incorporated herein as Exhibits A, B and C, with violating 18 U.S.C. §1029(a)(5) (fraudulent access device transactions) and 18 U.S.C. §2.⁴

I. "Skimming"

5. "Skimming" involves the practice of capturing and storing a person's debit or credit card information off the magnetic stripe located on the back of the card and then illegally producing duplicate cards or altering other cards with the victim's information encoded on the back. These cards are then used to make fraudulent purchases which are charged to the victim's account. The information encoded on the back of the

²**Ben-Mrad**, whose date of birth is 4/11/77, and whose social security number is ***-**-9572, resides at 108 Grinnell St., New Bedford, MA.

³**DOE** resides at 156 Main Street, Buzzards Bay, MA.

⁴18 U.S.C. §1029(a)(5) reads as follows: Whoever knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person or persons, to receive payment or any other thing of value during any 1-year period the aggregate value of which is equal to or greater than \$1,000 [shall be guilty of a crime.]

victim's debit or credit card can be captured and stored by devices known as "skimmers." "Skimmers" are typically small in size and have slots that cards are swiped through. Once a card is swiped through a "skimmer", the skimmer device reads and stores the information on the magnetic stripe. This information can then be downloaded to a computer and used to encode counterfeit cards or alter legitimate cards.

6. In most cases of skimming, the victims at some point temporarily relinquish physical control of their debit or credit card to someone, usually the employee handling the purchase transaction during a routine, legitimate transaction. Once the card is given to the employee, the employee processes the legitimate transaction and then "swipes" the victim's card through a skimmer to capture the card information.

7. As set forth, *infra*, in this investigation the victims all stated they temporarily relinquished physical control of their debit or credit card to the attendant at the Cape Cod Filling Station and shortly thereafter, purchase transactions were conducted without the authorization or knowledge of the card holder. The purchases were charged to the credit card holder's account.

II. Fraudulent Credit/ATM card use

8. On January 20, 2004, I and Special Agent Peter Lawler met with Detective Sergeant Richard J. Silvestro ("Silvestro") of the BPD. Silvestro advised that he has been investigating allegations of credit card skimming at a local gas station, the Cape Cod Filling Station, which is located at 156 Main St., Buzzards Bay, MA ("Cape Cod Filling Station") since December of 2003. Silvestro provided the following information:

a. On December 24, 2003, BPD Officer Wallace received a report of the fraudulent use of a credit card from a Sarah McLoskey "(McLoskey)", 9 Foretop Rd., Bourne, MA. McLoskey stated that over \$1,500 worth of fraudulent charges were placed on her credit card account from purchases made in New York and New Jersey. McLoskey learned of the fraudulent charges when she received a call from her credit card company. She stated the credit card representative called to inquire about the multiple high charges made on her account the previous day. McLoskey stated the only time her credit card left her possession was at the Cape Cod Filling Station. She stated she handed her credit card for payment to the attendant at the Cape Cod Filling Station and the attendant took her credit card inside the sales booth. McLoskey described the attendant she handed her credit card to as a tall Middle-Eastern male with black hair.

b. On December 30, BPD Officer Stowe received a report of a fraudulent use of a credit card from Robert Kessler ("Kessler"), 30 Maple St., Bourne, MA. Kessler stated someone had gained access to his Fleet Bank ATM/debit account number and used this information to purchase \$2,158.53 worth of goods at various locations in New York. Kessler stated Jennifer Roy ("Roy"), Kessler's girlfriend, had used his credit card at the Cape Cod Filling Station on December 18, 2003 with his permission. Kessler stated he tried to use his ATM/debit card a few days after that and was denied access because of insufficient funds. Kessler stated he was alarmed because his paycheck for \$1,000.000 had just recently been deposited into this account. Kessler contacted Fleet Bank regarding his account and learned of the fraudulent charges. Kessler received a list of over twelve separate fraudulent charges made in New York.

Roy stated she was the last person to use the ATM/debit card. She stated she purchased gasoline at the Cape Cod Filling Station. Roy stated she handed the ATM/debit card for payment to the attendant at the Cape Cod Filling Station and the attendant took the ATM/debit card inside the sales booth. Roy stated she observed the attendant writing a lot while he had possession of the ATM/debit card inside the booth. She stated she felt the attendant's behavior was odd because she had purchased gasoline at the Cape Cod Filling Station previously and the attendant had

never written anything down or taken as long to complete her sale. Roy described the attendant as a young, Middle-Eastern male with a slim build and dark hair.

c. On January 6, 2004, Officer Kinsella of the Falmouth Police Department received a report of a fraudulent use of a credit card from James Wolfsberg ("Wolfsberg"), 39 Tara Lane, Falmouth, MA. Wolfsberg stated his debit/credit card had been used in Maryland and New Jersey to make numerous fraudulent charges. Wolfsberg stated the last time his debit/credit card was out of his possession was at the Cape Cod Filling Station. Wolfsberg stated he is a frequent customer of the Cape Cod Filling station and typically uses his debit/credit card to make his purchase. Wolfsberg stated he knows the attendant that normally works at the station and identified him as "Wazzie". Wolfsberg stated **Ben-Mrad** is the attendant that he handed his debit/credit card to on the day in question. He stated the fraudulent charges appeared on his account soon after his last purchase at the Cape Cod Filling Station.

Wolfsberg was shown a photo array containing several photographs by Silvestro. Wolfsberg identified Ouajdi **Ben-Mrad's** photo as the attendant he handed his debit/credit card to for payment.

d. On January 7, 2004, Officer Lawrence of the Sandwich Police Department received a report of a fraudulent use

of a credit card from Diane Frost ("Frost") 389 Service Rd., Sandwich, MA. Frost stated there were two \$200.00 fraudulent charges on her debit/credit card from the Children's Place store in Glenn Burnie, Maryland. Frost stated the only time her debit/credit card was out of her possession was at the Cape Cod Filling Station. Frost was shown a photo array containing several photographs by Silvestro. Frost identified Ouajdi **Ben-Mrad**'s photo as the attendant she handed her debit/credit card to for payment.

e. On January 8, 2004, BPD Officer Stowe of the BPD received a report of a fraudulent use of a credit card from Lynda Brown ("Brown"), 29 Buttermilk Way, Buzzards Bay, MA. Brown reported her credit card had been fraudulently used in New York for three charges totaling over \$900.00. Brown stated the last place she had used her credit card was at the Cape Cod Filling Station on 1/05/04. Brown said she learned of the fraudulent charges upon receiving a telephone call from her credit card company, MBNA America. The MBNA America representative telephoned Brown to advise her of possible fraud charges and attempts to make fraud charges on her account. Brown informed MBNA America that she still maintained possession of her card despite being told that on two occasions an actual card was presented to make the fraudulent purchases in New York. Officer Stowe verified Brown's statement by viewing the credit card in

question. Brown described the attendant she handed her credit card to at the Cape Cod Filling Station as a Middle-Eastern male, mid-to-late 20's, with dark curly hair. Brown was shown a photo array containing several photographs by Silvestro. Brown identified Ouajdi **Ben-Mrad**'s photo as the attendant she handed her credit card to for payment.

f. On January 15, 2004, BPD Officer Hanley received a report of a fraudulent use of a credit card from Dona Swinamer, Nantucket Lane, Bourne, MA. ("Swinamer"). Swinamer stated her husband, Stephen, discovered two fraudulent charges on their account while checking their account balance online. Swinamer said both fraudulent charges took place in Hyattsville, Maryland on 1/13/04. One charge took place at an Old Navy (store #6239) for \$200.00 and the other at The Gap (store #1005) for \$200.00. Swinamer stated the last time she had used her debit/credit card was on 1/12/04 at the Cape Cod Filling Station. Swinamer said she purchased \$21.00 worth of gasoline on her debit/credit card. Swinamer stated she handed her debit/credit card to the attendant to pay. She described the attendant as a short, heavy set male of Asian descent.

g. On January 26, 2004, Madeline O'Leary of 48 Maple St., Bourne, MA reported fraudulent use of her credit card. O'Leary reported she was contacted by a representative of her credit card company, Chase Visa, about a purchase that was being

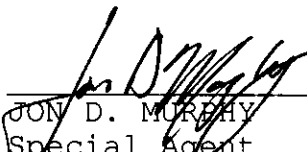
attempted on her account at a Circuit City store in Wilmington, Delaware on January 22, 2004. O'Leary informed the Chase representative that she had her credit card in her possession and had no knowledge of the transaction in Delaware. O'Leary last used her credit card at the Cape Cod Filling Station. O'Leary described the attendant as a short and stocky male with a round face and a pudgy nose. On February 5, 2004, I spoke with Madeline O'Leary via telephone. O'Leary informed me that the attendant she handed her credit card to at the Cape Cod Filling Station was of Hawaiian or Asian descent. She stated it was the first time she had seen him working at the Cape Cod Filling Station. O'Leary stated she was a frequent customer of the Cape Cod Filling Station and made notice of the new attendant.

9. In each of the cases detailed above, each victim stated they handed their card over to the attendant for payment and the attendant took their card into the sales booth alone to complete their gasoline purchases. At no time did any of the victims scan or swipe their own card, as is common at gasoline stations (i.e., "pay at the pump"), because the Cape Cod Filling Station is a full-service station where the attendants pump the gas for the customers. The victim's debit or credit card information was used within a short period of time, some within 24 hours, to make purchases in the states of Connecticut, New York, New Jersey, and Maryland.

10. During the past three months, agents of the Secret Service and officers of the Bourne (MA) Police Department, as well as surrounding towns, have received information on sixty-two (62) accounts that have been involved in debit/credit card fraud for a combined fraud loss of \$105,538.14. The common link among all sixty-two accounts has been that each victim at one time or another used his or her debit or credit card at the Cape Cod Filling Station.

CONCLUSION

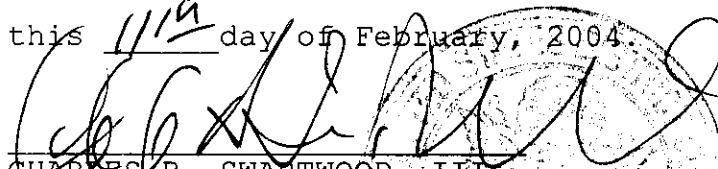
11. Based on the foregoing, I believe there is sufficient evidence to support a finding of probable cause that **Ouajdi Ben-Mrad** and **JOHN DOE** did knowingly and with intent to defraud effect transactions, with 1 or more access devices issued to another person or persons, to receive payment or any other thing of value during any 1 year period the aggregate value of which is equal to or greater than \$1,000, all in violation of 18 U.S.C. §1029(a)(5) and 18 U.S.C. §2.



JON D. MURPHY
Special Agent
U.S. Secret Service

Subscribed and sworn to before me

this 11th day of February, 2004.



CHARLES B. SWARTWOOD, III
United States Magistrate Judge